

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-0608-Cr-Seitz(s)(s)

UNITED STATES OF AMERICA

v.

CHARLES C. HERMANOWSKI,  
a/k/a "John Stobierski,"  
Defendant.

---

**GOVERNMENT'S PROFFER OF FACTUAL BASIS**  
**FOR ENTRY OF GUILTY PLEA**

The United States of America submits this proffer of the factual basis for the entry of a guilty plea by defendant Charles C. Hermanowski, a/k/a "John Stobierski."

This proffer is in support of the defendant's guilty pleas to the following counts of the Second Superseding Indictment:

- *Counts 2-11*, which charge the defendant with presenting false claims to the Department of Defense, in violation of 18 U.S.C. §287;
- *Count 22*, which charge the defendant with conspiring to violate 18 U.S.C. §1341 by committing mail fraud against cable television networks, in violation of 18 U.S.C. §371;
- *Counts 23-34*, which charge the defendant with committing mail fraud by defrauding cable television networks, in violation of 18 U.S.C. §1341;
- *Counts 68-69*, which charge the defendant with tax evasion, in violation of 26 U.S.C. §7201; and

- **Counts 72-85**, which charge the defendant with aiding and assisting in the preparation of false tax returns, in violation of 26 U.S.C. §7206(2).

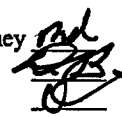
This proffer is organized as follows: Section A sets forth general background facts. Section B sets forth facts that support the defendant's convictions on Counts 22-34. Section C sets forth facts that support the defendant's convictions on Counts 68-69 and 72-85. Section D sets forth facts that support the defendant's convictions on Counts 2-11.

The defendant and counsel for both parties have initialed the bottom of each page of this proffer. By so doing, the defendant and defense counsel signify that they have read and reviewed each page of this proffer.

#### **A. BACKGROUND**

1. From the early 1990s through mid-1998, Americable International, Inc., was the parent company of various affiliated companies (hereinafter referred to collectively as either "Americable" or "the Americable companies") that provided cable television service in both the United States and Japan. Americable serviced customers in the United States both in private residences and on military bases, while its customers in Japan resided exclusively on U.S. military bases.

2. Except for Michigan and Indiana Cable Associates, the Americable companies were wholly owned by defendant Charles C. Hermanowski, a/k/a "John Stobierski," and his wife and were organized under Sub-Chapter S of the Internal Revenue Code for federal tax purposes. (Michigan and Indiana Cable Associates was a partnership in which the defendant and his wife held collectively held majority ownership.) During the commission of the offenses in this case, the



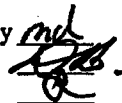
defendant had ultimate authority over the operations of the Americable companies. In this capacity, the defendant also had ultimate supervisory control over the activities of Americable company employees.

3. The defendant worked out of the central office of the Americable companies, which was located at 10711 S.W. 216th Street in Miami-Dade County, Florida. The vast majority of Americable's financial and accounting activities were carried out at its central office in Miami-Dade County. This included the preparation and maintenance of almost all of Americable's significant accounting documents and records.

**B. SCHEME TO DEFRAUD CABLE TELEVISION NETWORKS**  
**(COUNTS 22-34)**

1. Under contracts with cable television networks whose programming Americable would provide to its customers, the networks would charge Americable a specified fee for each Americable customer receiving their programming. In the early 1990s, the defendant began shortchanging the networks. The defendant instructed Rick Hensley, Americable's Director of Finance, to pay the networks only 77% of the fees actually owed. Hensley told Americable's comptroller, co-defendant Alice Pirchesky, who in turn saw that Americable's accounting department implemented the directive.

2. Each month, Americable received the accurate subscriber counts from the different Americable systems and then converted those counts to the falsely deflated figures that it reported to the networks. The falsified figures were memorialized on subscriber reports, which Americable mailed to the networks along with checks reflecting the falsely deflated subscriber counts. The



networks relied upon the truthfulness of those reports. Based upon spreadsheets that Pirchesky prepared at the defendant's direction, from the early 1990s through late April 1998, this scheme defrauded the networks collectively of approximately \$8 million in fees owed.

3. The chart below identifies certain subscriber reports that were mailed in furtherance of this scheme. The chart lists the reports according to the corresponding count in the indictment, the date of mailing, and the victim-network. The designation "Japan subscriber report" refers to reports that purport to list the number of Americable subscribers in Japan receiving network programming in a given month, while the designation "United States subscriber report" purports to provide the same information for Americable customers in the United States. All of the subscriber reports in the chart below falsely understated the true number of subscribers. Although the chart identifies only twelve reports and four victim-networks, the scheme to defraud the networks generated thousands of false subscriber reports and defrauded over fifty networks. The subscriber reports set forth below all were prepared in Miami-Dade County and mailed from Miami-Dade County.

<u>Count</u>	<u>Date Mailed</u>	<u>Mailing</u>	<u>Network</u>
23	July 5, 1996	Japan subscriber report	Discovery Channel
24	July 15, 1996	United States subscriber report	ESPN
25	December 3, 1996	Japan subscriber report	MTV
26	January 10, 1997	Japan subscriber report	Discovery Channel
27	February 24, 1997	Japan subscriber report	A&E Television Network
28	April 12, 1997	United States subscriber report	MTV
29	July 8, 1997	United States subscriber report	Discovery Channel

*ml*  
*DB*  
*2*

<u>Count</u>	<u>Date Mailed</u>	<u>Mailing</u>	<u>Network</u>
30	November 20, 1997	United States subscriber report	ESPN
31	April 3, 1998	Japan subscriber report	MTV
32	April 6, 1998	United States subscriber report	ESPN
33	April 13, 1998	Japan subscriber report	A&E Television Network
34	April 23, 1998	United States subscriber report	A&E Television Network

4. To avoid detection, Americable did not cheat networks that audited regularly. So that Americable employees correctly differentiated the networks that audited regularly and that should be paid 100% from those networks that did not audit regularly and that would be paid only 77%, Americable's bookkeeper, who worked at Pirchesky's direction, created a "cheat sheet" that identified the networks according to the percentages they were to be paid. Pirchesky discussed the "cheat sheet" with the bookkeeper when revisions were necessary and used it to train new employees.

5. Until mid-1995, Americable falsely recorded the fraud proceeds in its books as "payables" still owed to the networks. Starting in mid-June 1995, the defendant, Hensley, and Pirchesky began diverting those proceeds to the defendant. They directed Americable's accounting department employees to write checks to the defrauded networks in amounts corresponding to the fraud proceeds on Americable's books. Pirchesky and Americable's bookkeeper would identify the payees and calculate the amounts of the checks, which Hensley would sign, knowing that the checks would not be sent to the networks. Rather, the defendant would falsely endorse them in the names of the payee networks and deposit them into his account

at Community Bank in Miami-Dade County. The spreadsheet prepared by Pirchesky at the defendant's direction indicated that through late April 1998 the defendant deposited approximately \$8 million in fraud proceeds into his Community Bank account through these means.

**C. TAX FRAUD SCHEME (COUNTS 68-69 AND 72-85)**

1. The scheme to defraud the networks was part of a broader practice at Americable directed by the defendant of defrauding the Internal Revenue Service of millions of dollars in federal income taxes by falsifying company records and hiding information from the outside accountants who prepared Americable's and the defendant's tax returns.

2. At its most basic level, the scheme had two parts. The first part of the scheme involved the defendant creating or directing Americable employees to create various types of accounting records that recorded tens of millions of dollars of what were completely non-existent and falsified company expenditures. The defendant would "pay" these expenditures by diverting the funds to himself. This part of the scheme included the diversion of the \$8 million in funds owed to defrauded cable television networks through falsely endorsed checks deposited into the defendant's Community Bank account, as well as the following additional components.

a. The largest amount of false expenditure records generated as part of this scheme involved the creation of false invoices to various Americable companies for purported construction costs associated with installing and repairing cable for use in providing cable TV service. Most of the false invoices purported to originate from CCU, Inc., and "Mausina Development Corp.," although a small number purported to originate

from several other companies. CCU, Inc., was an actual Americable subcontractor, while "Mausina Development Corp." was a non-existent shell corporation used by the defendant to cover-up his diversion of millions of dollars from the Americable companies into his personal accounts. The defendant would draft the false invoices and then direct an Americable secretary to type them. Americable comptroller Alice Pirchesky would direct company employees to enter the invoices into the company books and records. Pirchesky then would generate checks on the defendant's behalf to "pay" the sums on the invoices, knowing that the defendant instead planned to divert the checks for his own use. After receiving the checks, the defendant would falsely endorse them and deposit them into his Community Bank account. These false construction invoices resulted in the diversion of at least \$38 million to the defendant.

b. Another component of the scheme arose out of the defendant creating false invoices for purported company expenditures from non-existent companies with names similar to those of art dealers from whom the defendant purchased expensive items of art. After the defendant had a company secretary type the false invoices, the defendant or an Americable employee then would write a checks against the invoice amount. However, the checks would be made payable to the actual art dealers, rather than the fictitious companies. The defendant used this component of the scheme to fund at least several million dollars in art purchases.

c. Another component of the scheme arose out of the defendant creating false invoices for purported expenses in marketing of cable television service to prospective

customers. The invoices that the defendant created purported to originate from "Mausina Development Corp." The invoices would be booked at Pirchesky's direction, and checks would be created in a manner similar to that used for the false construction invoices and corresponding checks. After receiving the checks, the defendant would falsely endorse and deposit them into a secret account that he maintained in Liechtenstein. Between 1995 and 1997, the defendant diverted over \$3 million into his account in Liechtenstein through the false Mausina marketing invoices and corresponding checks.

d. Another component of the scheme arose out of the defendant falsifying company travel, entertainment, and other miscellaneous expenses. Pirchesky and others would book the false expenditures at the defendant's direction. The defendant would have employees write checks corresponding to the false expenses payable to either "Cash" or an Americable warehouse employee. The warehouse employee would cash the checks for the defendant and return the cash to him. The defendant would structure the checks in amounts of \$10,000 or less, in order to prevent the bank from generating Currency Transaction Reports ("CTRs"). CTRs record cash transactions in excess of \$10,000 through financial institutions. The IRS uses CTRs to assist in identifying possible criminal activity.

e. One more component of the scheme arose out of the defendant cashing two bonus checks sent by QVC, which was a shopping channel broadcast on Americable systems. QVC would pay Americable bonuses for purchases made by Americable subscribers. In 1995, QVC issued two such bonus checks, that collectively amounted to

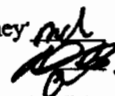


approximately \$1.9 million. One was made payable to the defendant, while the other was made payable to Americable International. The defendant deposited both of the checks into his Community Bank account, but reported neither as income on his federal income tax returns.

4. The chart below sets forth the approximate amounts that the defendant obtained through different components of the scheme described above. The defendant did not advise the accountant who prepared his federal income tax returns, IRS Forms 1040, of his receipt of any of these funds and consequently did not report them on his federal income tax returns.

<u>Component of Scheme</u>	<u>Tax Year 1995</u>	<u>Tax Year 1996</u>
Diversion of funds owed to cable television networks through deposit of falsely endorsed checks into Community Bank account	\$5.4 million	\$1.5 million
Creation of false CCU, Mausina, and other construction invoices and deposit of falsely endorsed checks into Community Bank account	\$31.7 million	\$6.3 million
Creation of false Mausina marketing invoices and deposit of falsely endorsed checks into account in Liechtenstein	\$200,000	\$1.8 million
Creation of false invoices to fund art purchases	\$490,000	\$1.7 million
Checks cashed for falsely booked travel, entertainment, and miscellaneous expenses	-0-	\$420,000
Rebate and bonus checks deposited into Community Bank account	\$1.9 million	-0-

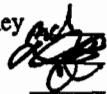
5. The second part of the scheme arose out of the booking of the false CCU, Mausina, and other construction invoices into the company records and the resulting impact upon the federal tax returns of both the Americable companies and the defendant. As Subchapter S corporations,



the Americable corporations did not pay federal income tax. Rather, the income and losses of the Americable companies "flowed through" to the defendant's personal return. That is, any transaction that increased the income of any of the corporations would increase the tax due and owing on the defendant's personal return, and any transaction that reduced the income of any of the corporations would reduce the tax due and owing on the defendant's personal return.

6. The false construction invoices would be entered into the company records as capital assets that were depreciated over a 7-year asset life. The Americable companies would claim the depreciation as "other expenses" on line 13 of their Forms 1120-S. The false depreciation would reduce the "ordinary income" reported on the Americable companies' Forms 1120-S. The falsely deflated "ordinary income" on the Forms 1120-S in turn would reduce the income that the defendant would report on his Forms 1040.

7. For tax year 1995, Americable corporations took approximately \$1.85 million in depreciation deductions based upon the false construction invoices. For tax year 1996, Americable corporations took approximately \$5.1 million in depreciation deductions based upon the false construction invoices. (The difference in the two years results from the fact that most of the false invoices were dated in the last four months of 1995, which limited the depreciation for 1995 to a fraction of the year.) The chart below sets forth the information relevant to the false depreciation claims for the Forms 1120-S for tax year 1996 charged in Counts 72-85. The companies set forth below were all Subchapter-S corporations owned by the defendant and his wife. The returns all were prepared in Miami-Dade County and mailed to the IRS from Miami-Dade County.



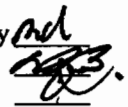
<u>Count</u>	<u>Date Filed</u>	<u>Company</u>	<u>Depreciation Claimed</u>	<u>Depreciation Based On False Construction Invoices</u>
72	Sept, 2, 1997	Americable International Arizona, Inc.	\$1,105,136.00	\$414,214.70
73	Sept, 2, 1997	Americable International Colorado, Inc.	\$206,956.00	\$175,929.00
74	Sept, 2, 1997	Americable International Florida, Inc.	\$707,154.00	\$449,215.00
75	Sept, 2, 1997	Americable International Massachusetts, Inc.	\$225,646.00	\$106,730.00
76	Sept, 2, 1997	Americable International Moffett, Inc.	\$539,929.00	\$288,102.49
77	Sept, 2, 1997	Americable International Roosevelt Roads, Inc.	\$453,733.00	\$370,374.12
78	Sept, 2, 1997	Americable International San Diego, Inc.	\$912,134.00	\$706,491.64
79	Sept, 2, 1997	Americable International Vandenberg, Inc.	\$597,773.00	\$519,499.56
80	Sept, 2, 1997	Americable International Vint Hill, Inc.	\$51,079.00	\$34,026.00
81	Sept, 5, 1997	Americable International Maine, Inc.	\$443,964.00	\$216,888.14
82	Sept, 5, 1997	Americable International Michigan, Inc.	\$82,500.00	\$49,391.00
83	Sept, 5, 1997	Americable International New York, Inc.	\$781,915.00	\$591,157.39
84	Sept, 8, 1997	Americable, Inc.	\$113,161.00	\$65,911.00
85	Sept, 8, 1997	Cable Satellite of South Miami, Inc.	\$1,881,231.00	\$1,112,095.41

8. On his 1995 IRS Form 1040, the defendant reported taxable income of approximately negative \$3.5 million and total tax due of \$22,945. On his 1996, IRS Form 1040, the defendant reported taxable income of approximately negative \$7.1 million and total tax due of \$23,641. The defendant's IRS Forms 1040 for both years were prepared in Miami-Dade County and mailed to the IRS from Miami-Dade County.

9. The scheme described in this Section resulted in the evasion of substantial amounts of tax due and owing for both years. Under *United States v. Williams*, 875 F.2d 846 (11<sup>th</sup> Cir. 1989), based upon recomputation of the defendant's returns that adjust for the different forms of unreported income, the falsely inflated depreciation, and other related falsifications, the total tax due and owing on the defendant's 1995 IRS Form 1040 equals between approximately \$13.5 million and \$14 million, while the total tax due and owing on the defendant's 1995 IRS Form 1040 equals between approximately \$5.5 million and \$6 million.

**D. SCHEME TO DEFRAUD DEPARTMENT OF DEFENSE**  
**(COUNTS 2-11)**

1. In the early 1990s, the federal government started closing military bases in various locations throughout the United States, including bases on which Americable companies provided cable television service. Over the course of a several year period that followed, the defendant hired lawyers and lobbyists in order obtain a change in the law that would allow the Americable companies to recoup non-depreciated capital costs incurred at military bases subject to closure.

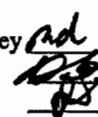


2. In May 1997, Americable comptroller Alice Pirchesky drafted a series of "Termination Settlement Proposals" that claimed repayments to which Americable companies purportedly were entitled as a result of the base closures. The sums claimed in the TSPs included purported construction costs reflected in false CCU and Mausina construction invoices that had been created at the defendant's direction in 1994 and 1995.

3. The TSPs were typed by an Americable secretary, based upon Pirchesky's handwritten drafts. On each of the TSPs, Pirchesky also had the secretary type the representation that the amounts recorded in the TSPs were "based on actual costs." This certification was in addition to the pre-printed statements on the forms certifying that the amounts recorded in the TSPs both were "true and correct" and "have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices."

4. Notwithstanding those certifications, the TSPs drafted by Pirchesky claimed repayment for costs reflected in false CCU and Mausina construction invoices. On June 10, 1997, Hensley signed the TSPs, knowing that they included false cost claims. The chart below identifies the submitted TSPs, according to Count, military bases subject to the respective TSPs, and the total costs claimed in each TSP. The TSPs set forth below all were prepared in Miami-Dade County and mailed from Miami-Dade County.

<u>Count</u>	<u>Military Base</u>	<u>Total Costs Claimed in TSP</u>
2	Naval Air Station Moffett Field	\$3,597,943
3	Naval Station Mare Island	\$2,896,819
4	Naval Hospital Oakland	\$1,554,881



<u>Count</u>	<u>Military Base</u>	<u>Total Costs Claimed in TSP</u>
5	Long Beach Naval Shipyard	\$1,207,145
6	Los Alamitos Naval Housing	\$467,835
7	San Diego Training Center	\$1,899,848
8	Fort Totten	\$500,660
9	Governor's Island	\$4,034,621
10	Vint Hill Farms Station	\$1,245,535
11	Fort Devens	\$3,984,480

5. In July 1997, the Navy referred the TSPs for naval bases to the Defense Contract Audit Agency ("DCAA"), which is part of the U.S. Department of Defense, where they were assigned to senior auditor Gerald Fortner, who received the matter as a routine audit request. As part of his audit, in July 1997 Fortner obtained from Hensley and Pirchesky the remaining TSPs for non-Naval installations, as well as various Americable accounting records that Hensley and Pirchesky represented provided back-up for the claims in the TSPs. After reviewing the records, Fortner sent Pirchesky lists of items for which he wanted additional documentation. The lists included entries associated with approximately \$8 million in false CCU and Mausina construction invoices that this defendant, Hensley, and Pirchesky previously had used as a vehicle to divert funds to the defendant. (Because of the way the invoices were allocated for accounting purposes among the different systems operated by the Americable companies, the \$8 million in false invoices were not reflected on the TSPs on a dollar-for-dollar basis. Rather, the sums claimed on the 10 TSPs attributable to the false invoices equaled approximately \$3.8 million.)

6. When she received the list, Pirchesky became concerned. She alerted Hensley and showed him the false invoices that were the subject of Fortner's request. Hensley in turn approached the defendant, who dismissed the concerns, opining that Fortner would not detect that the invoices were false. Hensley instructed Pirchesky to provide Fortner with the items that Fortner had requested.

7. In early August 1997, Fortner visited Americable's offices to review the back-up. Pirchesky directed Fortner to a conference room where various materials were left for him in different piles, along with a photocopier. These included copies of false CCU and Mausina construction invoices, as well as copies of corresponding checks. Pirchesky had left copies of the checks to make it appear as if the false invoices had actually been paid out to CCU and Mausina, when in fact the defendant had falsely endorsed them and deposited them into his Community Bank account.

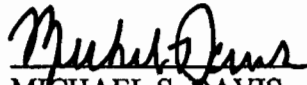
8. Fortner subsequently contacted third parties to check on the authenticity of the invoices that he had copied. Based upon his suspicions of the legitimacy of the documents that Pirchesky had provided to him, Fortner reported the matter to his superiors, which eventually led to the initiation of a federal criminal investigation by Special Agent Michael Parker of the Department of Defense, Defense Criminal Investigative Service.

9. On March 5, 1998, Agent Parker executed a warrant to search Americable's office in south Miami-Dade County. The defendant was present at the time of the execution of search warrant. Following the search, the defendant admitted to Hensley, "I guess I got a little greedy."

Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By:

  
MICHAEL S. DAVIS  
ASSISTANT UNITED STATES ATTORNEY  
FL BAR # 972274  
99 N.E. 4th Street  
Miami, Florida 33132  
(305) 961-9027  
(305) 536-7213 (FAX)  
e-mail: [Michael.Davis2@usdoj.gov](mailto:Michael.Davis2@usdoj.gov)